

**HIGHER EDUCATION
IN POSTCOLONIAL AFRICA**

Paradigms of Development,
Decline, and Dilemmas

Edited by
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Foreword by
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Chapter 10

**Student Discipline in Nigerian Universities:
The Limits of the Criminal Law**

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INTRODUCTION

Nigeria gained political independence from Great Britain on the 1st Day of October 1960. The educational system in the country, most especially for tertiary institutions is fashioned along the British model. A brief history of the first University established in Nigeria in the year 1948 shows the special relationship the University had with the University of London. This was the University College Ibadan now known as University of Ibadan, Ibadan, Nigeria (hereinafter referred to as U. I.). The establishment of the University was based on the report of the Asquith and Elliott Commission. The report concentrated on the fundamental principles, which were to guide the development of the University, and emphasized high academic standards in admission, staffing and autonomy. It was also suggested that advice for the University on how best to attain the objectives for which it was established was to come from overseas (U. I. calendar 1996-1998). The first principal of the former University College Ibadan in special relationship with the University of London was Professor Kenneth Mellanby (U. I. calendar pg 27).

Similarly, the idea of the establishment of another famous University in Nigeria was contained in a report of a commission headed by a Briton. The Ashby Commission on Post School Certificate and Higher Education in Nigeria and the subsequent report of the Advisory Commission of the UNESCO led to the establishment of the University of Lagos in 1962. (University of Lagos 1996-2000 calendar)

Tertiary education is more than the capstone of the traditional education pyramid. It is a crucial pillar of human development worldwide which provides not only the high level of skill necessary for every labor market but also the training. This is essential for all Universities and it is clearly a key part of all tertiary systems. The dual role of Nigerian Universities as repository of intellectualism and producer of high-level manpower cannot be overemphasized.

Students are important actors in the University system. They are the primary clients, consumers and learners. Within the University system, students' democracy is seriously canvassed for and encouraged. However, the University environment is bedeviled with many vices amongst students and staff alike and

this has resulted into disregard for the rule of law, flouting of regulations, flagrant abuse of power and more recently government interference.

The above situation has no doubt hampered the smooth running of the University system and has resulted in the University administration setting out rules and regulations for organizational management and the disciplinary mechanism to handle members of staff or students who flout the regulations.

The University community, though autonomous with its rules and regulations for internal control, is part of a larger society governed by the laws of the land. To this extent, these regulations are subject to the laws within the realms. This paper examines the discipline of students in Nigerian Universities and the limits of the Universities and the Criminal Law in achieving a common goal.

THE UNIVERSITY AND STUDENT DISCIPLINE

Anywhere in the world, the University has its own discipline and norms. According to Okigbo, Universities everywhere in the world reflect and mirror the dominant values in the society in which they are situated (Okigbo, 1992). They have also always been in control of internal discipline. In the early 1960s and mid 1970s, the Universities provided peaceable and sustainable environment devoid of serious crime. The display of youthful exuberance at times demanded the attention and intervention of the University administration in disciplining erring students. This is not to say that members of the University staff who flout the regulations are not also disciplined.

In recent times, the issue of students' discipline within the University has attained another dimension. This has been attributed to a reflection of the larger society. The increasing wave in criminal activities in the society has been translated into the citadel of learning. Activities such as cultism, rape, arson and even murder are found among University students.

All Universities are established with particular objectives. Generally, the cardinal objective of the University is to bring up the students in both character and training. In the University of Ibadan (U. I.), the primary function of the University is education of which the teaching of culture and the inculcation of good character is an integral part (U. I. Student Information Handbook 2001-2002). It is assumed that when a student accepts admission to the University, he or she has a serious purpose and a sincere interest in developing intellectually and socially. The University then assumes that the student will conduct himself or herself as a responsible citizen in accordance with internal rules and the laws of the land. There are similarities in the objects of all the Universities. (See University of Ibadan Act 1990 and some other University Acts)

The above situation is not peculiar to Nigerian Universities. In Canada, the objectives of the University of Windsor, Ontario is the advancement of learning and the dissemination of knowledge and the intellectual, spiritual, moral, social and physical development of its members and students and the betterment of the society. In the University of British Columbia, Canada, all students registered in the University are expected to behave responsibly and with propriety. In The

United Kingdom, the objectives of the University of Leeds and the University of Newcastle, New South Wales in Australia are similar to the above.

High standard of personal integrity is expected of every student in the various universities. Therefore, these universities regard as serious offences all acts of unethical immoral, dishonest and destructive behavior.

Under the prevailing conditions in the Universities, to achieve the stated objectives there are rules, regulations and laws to curtail acts of persons and to instill discipline into the students. Erring students in the Universities are perceived as young offenders who should be reformed. In more serious outrageous or habitual offences, serious disciplinary actions are taken and the laws of the country may come into operation.

CLASSIFICATION OF CONDUCTS

Within the Universities, there are rules and regulations governing different conducts. Acts are classified broadly into Criminal and Non-Criminal acts. The basis for the classification is that there are limits to which the University can act in matters of a criminal nature. In the same vein, there is a limit to which the state can interfere in the internal and domestic affairs of the University.

NON-CRIMINAL ACTS

These are cases that can be dealt with internally by the University and which need not be referred to the police. In various Universities, the non-criminal acts are given different names such as misconduct cases, improper acts, academic and non-academic offences and inappropriate conduct.

In all the Universities and under the Nigerian law, there is no definition of what amounts to misconduct anywhere not even under Section 256 of the Constitution of the Federal Republic of Nigeria (1999) on removal of a judge on grounds of misconduct. (Oyedele vs Ibadan University Teaching Hospital, 1990; University of Ilorin vs Akinrogunde 2002) According to Black Law Dictionary (5th edition) misconduct is defined as a transgression of same established and definite rule of action, a forbidden act, dereliction from duty, unlawful behavior, willful in character, improper and wrong behavior.

Misconduct is also defined as conduct on the part of the student, which impairs the reasonable freedom of another person to pursue their studies, research, duties or lawful activities in the University or to participate in the life of the university. It is an act detrimental to the proper conduct of the University or causes damage to University property. (Student Discipline Rules, University of Newcastle, 2002)

In the discipline rules of many universities, the different terms are not defined. However, a cursory look at the under-listed conduct shows that the above definition covers the various terms. A list of the conducts classified as misconduct, improper conduct or academic or non-academic offences is not exhaustive.

As earlier stated by Okigbo (1992) the university reflects and mirrors the dominant values in the society. The behavior and conduct of the students within a university is to a greater extent a reflection of the outside societal norms. These norms are translated into the university and the university, being a citadel of learning and character building has a duty to instill discipline and inculcate proper manners and give a sense of direction to the students. This explains the genesis of disciplinary committees and rules in all universities.

MISCONDUCT CASES IN THE UNIVERSITIES: A MULTINATIONAL PERSPECTIVE

The views and perspectives towards particular acts and conducts may differ from one person to another based on the race, sex or religion of the person. To a large extent, acts classified as misconducts in the student handbooks of various universities are similar. However, there are some differences based on several factors. Acts classified as misconducts in universities outside Nigeria are discussed below. It is important to state that in the different universities the acts subject to disciplinary actions are given various names some of which are listed below.

- i. Improper Conduct (University of Windsor. Faculty of Law Policy Statement on Students Discipline)
- ii. Inappropriate conduct (Loma Linda University Student Handbook; Title 5, California Code of Regulations, California State University)
- iii. Student Offences (University of Waterloo Undergraduate Calendar 2002 - 2003; see also The University of Newcastle New South Wales Australia Student Discipline Rule 2002)
- iv. Academic and Non-Academic Offences (University of Leeds Student Handbook Section 7)

The acts subject to discipline include

- a. Plagiarism: This is an act of misconduct in all the above universities. It is where a student submits or presents the work of another person as his or her own work.
- b. Cheating in examinations
- c. Willful and neglect damage of University property
- d. Obstruction or disruption of the campus educational process, administrative process or other campus functions
- e. Falsifying academic records including tests and examinations or submitting false credentials.

The above list is not exhaustive. The conducts listed are peculiar to all the Universities mentioned. It is important to state that apart from societal influence

on acts subject to disciplinary action within a University, professional ethics may also influence the determination of acts that may be classified as misconduct, improper or inappropriate. For example in the Faculty of Law, University of Windsor, Ontario, Canada there is a policy statement on student discipline set out exclusively for Law Students in the University. The Law Faculty of the University with the approval of the Student Affairs Committee established a Faculty of Law, Policy Statement on Student Discipline to govern the students enrolled in the Faculty. According to the statement

"In addition to the objects and purpose of the University as a whole, the study of law and practice of law demands from law students and lawyers those high qualities of character encompassed by the word integrity as drawn from the Canadian Bar Association Code of Professional Conduct. (Chapter 1)

The spirit and intent of the Code requires civility, candor, honesty and adherence to sound moral principle in their academic and personal behavior to the end that credit shall be reflected in the law school and legal profession. Law is an honorable discipline and lawyers are of an honorable profession." In Nigeria, acts for which students are disciplined are numerous. However there are also similarities in the various universities. As in the other jurisdictions, acts for which students are disciplined in Nigeria, to a very large extent reflect common habits found but not tolerated even within the society. The discussion below highlights acts of misconduct which is not exhaustive in Nigerian Universities.

Certificate Fraud/Racket

The misconduct of certificate fraud or racket is common among new entrants into the University. In 1974, there was a scandal in the University of Lagos as many students found to have forged their certificates in a certificate racket were expelled from the University. In 2002, the authority of the University of Ibadan published the names of seven hundred students and expelled them for various offences ranging from forged certificates and matriculation numbers. In some of the University Acts, the senate is given the power to deprive any student of any degree award or diploma which have been conferred upon such a student if after due enquiry such is found guilty of dishonorable or scandalous conduct in gaining admission into the University or obtaining the award (Section 6 (6) University of Ilorin Act 1990; University of Jos 1990).

Bed-space Trafficking

This is an act of misconduct peculiar to Nigerian Universities. This is the unauthorized transfer and receipt of bed-space gratis or by direct sale. Bed trafficking became an act of misconduct, as a result of trafficking of bed-spaces among students caused by inadequate bed-spaces in halls of residence. Students therefore took advantage of the situation to exploit others who were not officially entitled to bed-spaces. To discourage such practices, the University authority made it an offence to sell bed-spaces.

Squatting

Squatting is also in relation to hostel accommodation in Nigerian Universities. It is an offence to squat another person whether or not the person is a student. This became a misconduct to discourage undesirable persons not officially recognized by the hall authority from mingling with student's resident within the hall. The misconduct arose out of the accommodation problem both within and outside the University. The cost of accommodation outside the University is so enormous and high while the cost of hostel accommodation within the Universities is highly subsidized but grossly inadequate. The effect is that persons outside the University who cannot afford the cost of the rent squat with friends, relatives and even persons unknown to them who are students and who have been officially given accommodation. In addition, certain students who have accommodation use the opportunity to exploit others by charging exorbitant fees to squat such persons.

Membership of Secret Cult on Campus

Student involvement in secret cults on campus is an endemic problem in Nigerian Universities. According to Bamgbose, it is now a dreaded monster that has acquired such a phenomenal dimension that the Nigerian government and even the University administration cannot resist being alarmed (Bamgbose, 2002). The problem of cultism in the Nigerian universities crept into the institutions in Nigeria because of the lack of knowledge of the administration and the society at large of the magnitude of the dangers associated with the group.

Secret cults have been banned in all Universities in Nigeria (U. I. Student Information Handbook 2001 - 2002; See also Decree 47 of 1989). In this Decree, it is also a criminal offence to belong to a secret cult on campus. The involvement of the university in such a case comes in after the police have concluded their own part of the case. The University has the power to punish the offender for contravening its rules of proscription of all secret cults by expulsion.

Indecent Behavior

Indecent behavior is misconduct under all the University regulations. Series of conducts may amount to indecent behavior. Certain conducts are universally accepted to be indecent with the result that it is considered not necessary to enumerate them in the disciplinary handbook of Universities in certain societies. Acts such as urinating in public places, spitting in public places are considered indecent. The fact that the occurrence of such acts is unimaginable in those societies explains why they are not explicitly stated as indecent behavior in the handbooks of discipline of student. In Nigeria, these acts even though intolerable in the Ivory tower settings are still found among students. The University has the function of inculcating good character therefore the inclusion of such acts as indecent behavior.

The list of acts classified as misconduct among students in Nigerian Universities is not exhaustive. Disciplinary Committees of the various universities are empowered to look into any other case brought before it, which is not explicitly stated in the guidelines or rules, and they are to determine such cases and add them to the existing guideline (University of Ibadan Student Information Handbook, p. 42).

DISCIPLINE AND PENALTIES

In exercising the power to discipline conferred on the Vice Chancellor, the Vice-Chancellor may direct that particular penalties be imposed as punishment. The aim of such penalties is basically to reform the erring student. However, other objects are to deter other students from pursuing such acts and in very rare cases, the aim is to inflict pain. There are different factors that the disciplinary committee must take into consideration. These include the nature of the misconduct, gravity of the misconduct, the frequency of the misconduct within the University, the character of the offender and the position of the offender among the co-offenders. In the Nigerian Universities, there are similarities in the penalties imposed on students for misconduct. These penalties are briefly highlighted.

Reprimand

This is a warning giving to a student found guilty of a misconduct with the aim of admonishing against future acts. It is imposed in less serious cases such as jumping the queue or crossing the lawn.

Strong Reprimand

This is usually given in more serious cases where the committee frowns and takes a more serious stand against the act of the student. It is imposed in such cases as smoking during examination or disturbance during examination.

Rustication

This form of penalty is used in very serious cases usually where violence is involved and the committee is of the opinion that the erring student should be ordered to stay out of classes or the University for stipulated period. It is used in such cases as threat of violence fighting and damage of University property.

Expulsion

This is the ultimate penalty used in very grave cases of misconduct. It is imposed in cases where the disciplinary committee is of the opinion that in the best interest of other students and the University community as a whole the erring student should be told to leave the University and the studentship is terminated. To protect its image and its integrity, a student may be told to withdraw. The penalty is usually imposed in cases such as possession of live question paper, acquisition of live paper before an examination, cultism, or where death is involved and the student is found guilty by a court of law.

Forfeiture of Bed Space or Ejection

This is imposed in misconduct cases involving accommodation in halls of residence. A student may forfeit the bed space allocated or may be ejected from the hall of residence.

Surcharge

This form of penalty is specific. It is imposed only in a misconduct case of defacing or damage or destruction of University property. The surcharge is for the repair of damage done.

PENALTIES IN OTHER JURISDICTION

The penalties in other jurisdictions are to a large extent similar to the Nigerian position discussed above. However, there are a few differences. The penalties discussed below may be singly imposed or in combination with other penalties. However they are not exhaustive.

Probation

This disciplinary action is taken either alone or with other penalties. An erring student may be on probation for the balance of the period of registration at the University in the degree program in which the student was registered at the time of the offence. (University of Waterloo, Policy 71; Title 5, California Code of Regulations) A student with such a disciplinary status in certain cases may be dismissed for continued or repeated misconduct without further committee action (Loma Linda University Student Handbook – Discipline and Appeal Policy).

Restraining Order

This is an order restraining a student found guilty from going further with the act of misconduct. This is usually in cases of threat to individuals.

Expunging of grades or revoking of Degree

This is a penalty imposed in cases involving examinations, assignments, and work term reports. The grades awarded to the student may be expunged or the Degree awarded revoked (University of Waterloo 2002 – 2003; The University of British Columbia Calendar 2002/2003).

Termination at the end of the quarter

This penalty is actual dismissal of the student found guilty of misconduct but with permission to complete the courses in progress, provided the students conduct is acceptable during the interim period. (Loma Linda University Student Handbook)

Fine

Fine is another penalty imposed. Depending on the gravity of the offence, the maximum amount to be paid is stipulated in the guidelines. In the Uni-

versity of Leeds in the United Kingdom, fines in summary procedures or less serious offences are an amount not exceeding Twenty-five pound. In serious cases of misconduct or non-summary cases the amount of fine must not exceed One hundred pound. (University of Leeds Disciplinary Regulation Section 7)

Apology

The disciplinary committee may order that the student found guilty of misconduct apologize to an aggrieved student or individual.

Restitution Order

This is an order for a particular amount to be paid as compensation for damage (University of Windsor Ontario. Faculty of Law Policy Statement on Student Discipline)

DISCIPLINARY MACHINERY

In the enforcement of discipline within the Universities, the rights of the students must not be breached, denied or abridged. Violation of the rights may lead to such issues becoming justifiable. Therefore, there are machineries in place to ensure that though discipline is enforced, it is in line with the principles of natural justice.

In Universities in Nigeria, the Senate has an important role to play in regulating the conduct of students. (U. I. Act 1990, Section 5) One of the general functions of Senate is the admission and discipline of students.

POWER TO DISCIPLINE

The power to discipline student is vested in the Vice Chancellor of the University (U. I. Act 1990 Section 10 (1)).

Where the student is registered in a college, the power to discipline is vested in the Provost (University of Lagos Act, section 19 (5) 1990)

In certain cases, they are empowered to delegate this function (Section 13 (1) U. I. Act 1990; Section 17 (4) University of Benin Act; Section 19 University of Lagos Act 1990)

In other foreign Universities, different people are empowered to enforce discipline. For example in the University of British Columbia, Canada and in the California State University, United states of America, the power to discipline students is vested in the President of the Universities. (University of British Columbia Act, Section 61; See also Title 5, California Code of Regulation). On the other hand in the Loma Linda University, the Dean of the School in which the student is registered or his/her designee is responsible for the discipline of the student (Loma Linda University Student Handbook – Discipline and Appeal Policy).

STUDENT DISCIPLINARY COMMITTEE

There are machineries set up to ensure fairness while instilling discipline. One of such is the setting up of disciplinary committees. Under the disciplinary system in the University of Ibadan, in practice, there is a standing Student Disciplinary Committee (SDC) with the general function of dealing with individual cases of discipline. The Vice Chancellor is the Chairmap of this committee. Other members include the master or mistress of the hall concerned, the Registrar and the Deputy Registrar (Student) as secretary to the Committee and two student representatives (U. I. Student Information Handbook 2001 - 2002). In all Nigerian Universities, there are different forms of student disciplinary committees with different compositions. While in the Universities of Ibadan, the Vice Chancellor is the Chairman of the SDC (U. I. calendar 1996, pg 145) in the University of Jos, the Chairman is the Deputy Vice Chancellor and there is a slightly different composition. (University of Jos Calendar 1980 -1981 p. 36).

The terms of reference given to the SDC in the various Universities differ. For example in the University of Jos, the term of reference given to the SDC is "To advise the Vice Chancellor on all mater relating to the discipline of students as may be referred to it by the Vice Chancellor".

The above set up in the University of Jos has been criticized by Ojo (1995, pg. 73). According to him, this power is "Untidy and should be rectified". According to him, a situation where a Vice Chancellor determines which case to forward or not does not leave room for fairness, as the committee is not in a position to challenge the Vice Chancellor powers.

In the University of Lagos, there is an Ad Hoc Committee to look into disciplinary cases against students. In 1986, the visitation panel of the University of Lagos recommended that the Ad Hoc Disciplinary committee in the University was not suitable for effective disciplinary cases of students. The then Visitor of the University rejected this recommendation on the basis that the University should not have a judge in residence (Federal Republic of Nigeria, 1988).

In the University of British Columbia, Canada, the President is empowered to set up a President Advisory Committee on student discipline. The terms of reference are to conduct the hearing of the case and report to the President of the University who makes the final decision. (University of British Columbia Act, Section 61) In the Faculty of Law, University of Windsor Canada, there is a discipline committee comprising six members of whom four are students and two are full time members of staff. The term of reference is to hear and determine the case.

In the University of Newcastle, New South Wales, Australia, disciplinary cases are referred to the Vice Chancellor who may hear the case or refer it to the Disciplinary Committee. (Student Discipline rules) On the other hand, in the California State University, the proceedings in the student disciplinary case is conducted by a hearing officer (Title 5, California Code of Regulation Section 41304).

STUDENT DISCIPLINE AND THE LAW

The University is within the milieu of a larger society. Therefore, it is not devoid of the applicable laws of the land. The administration of the Penal Code in Northern Nigeria (Cap 345 1990) and the Criminal Code in Southern Nigeria (Cap 77, 1990) has its implications on issues relating to students discipline. Firstly, all persons, students inclusive are bound by the laws of the land. (Section 12 A (1), Criminal Code, 1990). Under the two laws, all criminal conducts must be as defined in the Codes. In addition, no person is to be tried or punished in any Court in Nigeria except under the express provision of the Code. (Section 4, Criminal Code, 1990). Also, by virtue of the Constitution, no one can be punished for any criminal act except in accordance with the provisions of the Law (Section 33, 1999).

In *Denloye V. Medical and Dental Practitioners Disciplinary Committee* (1968) and in *Medical and Dental Practitioners Disciplinary Tribunal v. Dr. Okonkwo* (2001) the Supreme Court held that a tribunal cannot proceed to try criminal offences punishable under the Codes.

In disciplining students for cases of misconduct, the University is performing a quasi-judicial function. This is distinct from the administrative or executive function the University performs. They are therefore bound by all the Laws of the land. The powers given to the Vice Chancellor or President in the various University Acts does not oust the jurisdiction and control of the court if the power is used out of the confines of the law.

Criminal acts are outside the confines of the powers of the Universities. There is a limit to the extent to which the University can act in disciplining a student. The Supreme Court in Nigeria in the case of *Garba v. University of Maiduguri* (1986) held that there is a limit to which the Universities can deal with acts of a criminal nature. The court held that whether or not a student is guilty of a crime is not an internal affair of a University. According to *Obaseki (JSC)* any attempt by the University to trespass into the arena of criminal acts committed by students and impose sanction is a very painful denial of fundamental right and it will do more harm than good to the interest of the student (pg. 576). See also *Sokefun v. Akinyemi and 3 others* (1980). The purport of the decision in the case of *Garba* is that any attempt by the Vice Chancellor or President to deal with criminal cases will be *ultra vires* and will render the action of the university null and void. This was restated in *Military Governor of Imo State Vs Nwanwa* (1997).

In *Godfrey Adoroh v. The Registrar University of Ibadan and Another* (1997), the Federal High Court in Lagos quashed the proceedings of the University of Ibadan Student Disciplinary Committee in respect of a case against the applicant and declared it null and void on the ground that the case was a criminal case under section 412 of Criminal Code (1990), and such a case can only be decided by a Court of competent jurisdiction. The Court further stated that the case could therefore be only punishable as an offence by proof beyond reasonable doubt by a formal trial conducted according to due process.

Criminal cases such as fraud theft, burglary, assault, murder, rape, possession of fire arms, arson, possession and use of hard drugs and membership of secret cults are outside the jurisdiction of the University.

The universities are not totally precluded from disciplining students alleged or found guilty of criminal acts. The University has a part to play in ensuring that students of the University engaged in criminal activities are disciplined through the appropriate authority. At the same time, the university has a right to maintain peace and order within the campus. Therefore, where a student is charged with a criminal offence, to avert a breakdown in law and order or destruction of lives and property, the Vice Chancellor has the right and is under a duty to ask the student to temporarily keep off the University pending the determination of the trial against him or her in Court. (*University of Ilorin v. Akinrogunde*, 2002). This is also the position in *University of Leeds, United Kingdom* and in the *University of Newcastle, New South Wales Australia*.

According to the *University of Ibadan student Information Handbook (2001 – 2002 pg. 43)* all criminal cases must be reported to the police for necessary action by the Chief Security Officer. The Vice Chancellor must be duly informed of such cases. The final decision of the student Disciplinary Committee in all cases of a criminal nature will depend on the outcome of the police investigation. Where a student is found guilty of a criminal case by a court of law, the student disciplinary Committee may decide to suspend or expel such a student. This position was re-emphasized in the case of *Godfrey Adoroh v. The Registrar, University of Ibadan and Another (1997)*. The Court held that the power of the University to punish in circumstances involving crime is subject to the full operation of the penal process. This is also the position at the *University of Leeds United Kingdom* by virtue of section 7 of the Student Handbook, where there is a criminal prosecution against a student. The University must not take any action until the police have concluded their proceedings. By virtue of Section 7.41 of the Student Handbook, if the verdict of such a case is not guilty, the University will take no further action on the case. However, if a non-custodial sentence is imposed, the University may decide in addition to proceed under the University disciplinary regulation. If the sentence is custodial, the current registration of the student is rescinded. In the *University of British Columbia Calendar (2002 – 2003)* it is stated that the laying of a charge under the *Federal/Provincial Legislation or Commencement of Civil proceeding* does not preclude disciplinary measure being taken by the University.

The position that the University may proceed against a student found guilty of a criminal act is not against the principle of double jeopardy. The award of a certificate and a Degree is the sole prerogative of the University. The certificate is awarded based on learning, character and integrity. In the award of a degree at the *University of Ibadan*, for example, the following citation is read by the Registrar at all graduation ceremonies.

“Vice Chancellor, the persons who will be presented have fulfilled the requirement of the Statutes and Regulation of the *University of Ibadan* and

have been found worthy both in character and in learning to be admitted to the Degrees of their various faculties. I therefore call upon the Deans to present the Graduands of their respective Faculties” (*Order of Proceedings, 2001*).

Therefore, where a student has not met the objects of the University, the University has a right to withhold the award of its degree. A student found guilty of a crime is of questionable character not worthy of the certificate awarded by the University who has a right to terminate the studies of such a student or suspend him or her until he/she is purged of the offence. In *All-Well Brown v. University of Ibadan (1995)* the learned judge held the view that any legal system that is to succeed has a duty to be oriented towards the moral uprightness of the youth in the society.

Many factors have led to the dismissal of criminal cases involving University students. These include lack of proper handling of matters by the police during prosecution, lapses on procedural issues by the University. In *Olori Magage v. University of Benin (1997)* the University administration did not comply with the laid down discipline procedure in the University Act. In the Act, Section 17 provides that the power to discipline is vested in the Vice Chancellor subject to appeal to council. (Cap 452, 1990). However a committee not recognized by the Act handled the case of the Plaintiff who was then the president of the students union in the University. The student filed an action in Court challenging the power of the Provisional Council to discipline him. The Court held that this Council did not have a right to handle the case and held that the decision of the Council was null and void.

In some cases, other factors are taken into consideration and erring students are not prosecuted. For example, in the case of *Mieban All-Well Brown and Another v. University of Ibadan (1995)* a case of rape, the police after their investigation recommended as follows:

Although there is enough evidence to prosecute the four students, I am of the view coupled with the plea of the victims' guardian that charging the case to Court will do an indelible damage to the image of the complainant by way of exposing her to public contempt and ridicule. This may adversely affect her to marry in future. In the circumstances, I am referring the matter to you for disciplinary action against the students involved please.

Judicial authorities have consistently emphasized that with regards to domestic affairs or problems of the University, that the visitor or Vice Chancellor must reserve the exclusive jurisdiction to deal with them. It is for this reason that statutory powers are given to them for the purpose of discipline. This was stressed in *Akintemi and Others v. C. A. Onwumechili, Vice Chancellor University of Ife and Others (1985)*. In *Mieban All-Well Browns case (1995)* the counsel for the applicant contended that the University had no power to deal with the case of rape. The learned judge disagreed. He held that the University had done its bit by referring the issue of rape to the police for investigation. The

other aspect taken by the student disciplinary committee of the University is a domestic issue. He further stated:

The University must have power to discipline its students. Students go to the University to acquire discipline and the Vice Chancellor and the University authority must have a right and indeed a duty to restore order and discipline in their institutions. What the University investigated was the gross misconduct on the part of the applicants as members of the institution. It is not for the University to force the police to prosecute the applicants and others involved. (Pg. 15)

The Courts have in many cases shown that they would not meddle into the domestic affairs of the University. They have held that students accused of misconduct must exhaust the University machinery for disciplinary actions and appeals before appealing to the Court of Law for a redress. (*Asein v. University of Ibadan*, 1985)

In as much as the Courts would not interfere in the domestic affairs of the University, the Court still remain the temple of justice for all citizens. A student who is not satisfied with the decision of the disciplinary committee of the University has a legal right to seek redress in a court of law after exhausting all internal machineries for appeal. These are usually in cases of irregularities tantamount to a denial of rights. Of great importance to this paper is the breach of the rule of natural justice. This power of judicial review of the University administration is regarded as a sacred pillar of democracy though criticized as counter majoritarian (*Akinrinmade*, 1999). The relevance of the principles of natural justice in the discipline of students in the University is discussed below.

STUDENT DISCIPLINE AND THE RULE OF NATURAL JUSTICE

The power of the Vice Chancellor of a University or the President to discipline a student for misconduct may be so wide and sweeping, but they are not definitely exercisable in vacuo. It is subject to the due observance of the process of law and the general principles of the rule of law, such as constitutional and other procedural safeguards for the due maintenance of security law and order. The Courts have never denied that a University is entitled to commence disciplinary proceedings against a student for lawlessness but all such proceedings must be conducted with the principle of natural justice as reinforced in the Nigerian constitution. Failure to comply may result in the whole process being declared null and void.

In instilling discipline in students through the various machineries discussed above, the Vice Chancellor, President or anybody or committee assigned to handle any disciplinary case are enjoined to observe and enforce the rules of natural justice in the disciplinary proceedings. It is very important that the provisions of the Constitution of the Federal Republic of Nigeria (1999) relating to the Fundamental Human Rights are complied with. The rules of fair hearing must also be rigidly followed in any process of student discipline.

In such proceeding, the rules of *nemo iudex in causa sua* and *Aldi alteram partem* must be adhered to. A student must be made to know the complaint against him or her. No disciplinary action should be taken against a student without first notifying the student of the cause. By virtue of section 36(6) of the 1999 Constitution of the Federal Republic of Nigeria, a person charged of an offence is entitled among other things to be informed in details of the nature of the offence. (*Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo* (2001))

Another important rule is that in a disciplinary action, the student must be given an opportunity to be heard. This is expressed in the Latin maxim *audi alteram partem*. In *Awotedu v. Vice Chancellor, University of Ibadan* (1982) the Plaintiff in the case, a female student of the University, breached the University regulations by being in full time employment while registered as a full time student. She was expelled from the University. The High Court of Oyo State declared the expulsion a nullity on the ground that it was proved that the Plaintiff was denied a right to be heard. In *Mieban All-Well Brown and Another v. The Registrar, University of Ibadan and Another* (1995), the Court held that this rule has been incorporated into the Nigerian jurisprudence that a man cannot be condemned without being heard. The Court further held that the principle of fair hearing is not a technical one but a rule of substance. The test is objective and not subjective. This rule of *audi alteram partem* is to be applied in all cases in which a decision is to be taken and in any matter whether judicial, quasi judicial like in a disciplinary case or even a purely administrative proceeding. See *Oyeyemi v. Commissioner of Local Government, Kwara State* 1992; *Okoduwa v. State* (Supreme Court, 1998)

It is a rule of natural justice that no person must be a judge in his or her own cause. It is against the principle of natural justice for a Vice Chancellor to preside in a case that directly affects him or her. (*R. V. Chancellor of the University of Cambridge*, 1723). In *Garba v. University of Maiduguri* (1986), the Deputy Vice Chancellor who was a victim of a stampage involving some students presided as chairman of the Student Disciplinary Committee in accordance with the composition in the University Act. The student who was found guilty by the committee filed an action in court that the composition of this particular committee was against the principle of natural justice. The court held that the act of the Deputy Vice Chancellor was contrary to the rule of natural justice, as he cannot be a judge in his own cause.

It is also important to note that the general rules that are observed in any criminal proceeding are fundamental to human rights and are applicable in any disciplinary proceedings. For example, a student must be presumed innocent until the contrary is proved.

RIGHTS OF APPEAL

The decision of the Vice Chancellor, President or any disciplinary committee is not final. A student found guilty of misconduct has a right of Appeal.

(Section 10 (2) U. I. Act 1990; Section 17(2) University of Benin Act, 1990; Section 17(2) University of Calabar Act, 1990 The University of British Columbia Calendar 2002 – 2003)

The procedure for appeal varies from one University to another. In most of the Nigerian Universities, the appeal is to the University Council within a stipulated period. In the University of Ibadan, the right to appeal is within fourteen days after the decision of the committee. The council committee on disciplinary matters on receiving the appeal from a student considers the merit and demerits and recommends to Council. The interpretation of the provisions on appeal is that it is not in all cases that a student has a right of appeal. It appears that is only where the penalty given is a rustication or expulsion that student has a right of appeal. (Section 10 (2) U. I. Act See relevant sections in all other University Acts in Nigeria) In this writer's view, this should not be the case. No matter the sanction given to a student in a disciplinary case, he or she should be allowed to exercise the right to appeal.

In the University of British Columbia Calendar (2002 – 2003) the student has a right of appeal in any decision of the committee to the Senate committee on student Appeal on Academic discipline. The student is to notify the Registrar in writing within forty-five days after receiving the letter from the President. At the Faculty of Law, University of Windsor Ontario, in the Policy statement on student discipline, the appeal in a disciplinary case is to a Disciplinary Appeal Committee. In the University of Leeds in the United Kingdom, a student has a right of appeal to the Vice Chancellor. In Loma Linda University, a student who does not believe the discipline is appropriate has a right to request the Dean of the School in writing for a review by the executive committee.

RECOMMENDATIONS AND CONCLUSION

As stated in *Garba v. University of Maiduguri* (1986, pg. 577) a University Student is a priceless asset and he or she is on the threshold of a world of useful service to the nation. They are not above the laws of the land but care should be taken that in the process of disciplining they are not destroyed by stigmatizing them with guilt of offences unless proved guilty by a court or unless due process is followed in a disciplinary process.

Having examined the rules and regulations relating to students' discipline and the rules of natural justice, the following suggestions are made:

An attempt should be made to define the term misconduct in relation to students' discipline. It is an unhealthy situation when a term such as this is not defined even when it is used in the Constitution. It leaves room for ambiguity and probable abuse.

The restriction in the appeal process should be reviewed. Appeals should be allowed to appeal in all cases where a student has been found guilty. An aggrieved student who has faced a disciplinary committee found guilty and given a punishment as minor as a reprimand or as serious as an expulsion should

be given the equal opportunity of an appeal. This is because any pronouncement of guilt is an indictment on the student

Under the Criminal Justice System in most countries, it is being advocated that focus should shift from the State and the accused to the victim. The same suggestion is being advocated in the disciplinary process of students in the University. It is suggested that such orders like restitution and compensation and apology to an aggrieved individual should be added to the penalties already in the disciplinary rules in Nigerian Universities.

The stand of the Courts in cases involving students' discipline is commendable. It is suggested that the legal units in the Universities should ensure that the administration duly comply with the rules of natural justice and adhere strictly to the laws of the land while enforcing discipline within the Ivory towers.

We must not lose sight of the fact that the Universities exist to train future responsible leaders of our great nation and that one of the conditions which they must fulfil before being presented as graduates is that they must be found worthy in learning and character. Therefore, if the character of a student is doubtful, due to his arrest and prosecution by the relevant agencies, it is only reasonable for the University authority to play safe by taking necessary steps under the enabling enactment to safeguard its reputation by not graduating a student who is later convicted and sentenced by a Court of competent jurisdiction or graduating and ex-convict.

Per Onnoghen (JSC) in *University of Ilorin v. Akinrogunde*. (2002)

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